IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16528 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJAY HIRABHAI GONDALIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16528 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MS PAURAMI SHETH Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Ms.Paurami Sheth, learned AGP has placed on record the affidavit in reply on behalf of respondent

no.2. Same is kept on record.

2. Heard Mr.A.K.Pandya for Ms.K.U.Mishra, learned advocate for the petitioner and Ms.Paurami Sheth, learned AGP for the respondents.

3. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention dated 4.9.2003 (Annexure-A) passed by respondent no.2 under the provisions of Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") and prays for quashing and setting of the impugned order of detention.

4. In the grounds of detention (Annexure-B), it is stated that as many as 3 cases under Section 379 and 114 of the Indian Penal Code came to be registered against the petitioner and his associates on different dates in August,2003. The statements of two witnesses both relating to the incident of 29.8.2003 have also been referred to wherein Dinesh Rameshbhai has been shown as the associate of the present petitioner. The allegations against the petitioner is that he is a dangerous person inasmuch as he has been indulging into the theft of motor-cycle for which 3 registered cases and 2 unregistered cases came to the light. Privilege under Section 9(2) of the PASA Act has also been invoked and privilege claimed for withholding the identity of the witnesses.

5. It has been submitted by learned advocate for the petitioner that the impugned detention order is liable to be quashed and set aside since the acts alleged against the petitioner do not relate to the maintenance of 'public order' but the same would be maintenance of 'law and order'. That Section 3 of the PASA Act could not have been invoked looking to the nature of allegations. It is further contended that the detention order passed against the detenu - Dinesh Rameshbhai Goswami has been quashed and set aside in Special Civil Application No.17048 of 2003 and for the reason of parity also, the present petitioner is required to be set at liberty.

Ms.Paurami Sheth, learned AGP does not dispute the fact that the co-detenu - Dinesh Rameshbhai Goswami has been released by order dated 26.2.2004 passed in Special Civil Application No.17048 of 2003.

6. In the case of Ashok Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Others, 2000 (1) GLR

816 it has been held by the Division Bench that, "four cases registered against the detenu under the Indian Penal Code, looking to the incidents the case fall under the maintenance of 'law and order' and not 'public order' and therefore, the subjective satisfaction arrived at by the detaining authority cannot be said to be legal and valid and the order of detention could have been passed for maintenance of 'public order'.

7. Looking to the fact that the acts alleged against the petitioner fall under the maintenance of 'law and order' and not 'public order' and therefore, the subjective satisfaction arrived at by the detaining authority cannot be said legal and valid. Over and above the detention order under the PASA Act against the co-detenu - Dinesh Rameshbhai Goswami having been quashed and set aside in Special Civil Application No.17048 of 2003, the impugned detention order against the present detenu is also required to be quashed and set aside.

8. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 4.9.2003 (Annexure-A) passed by respondent no.2 against the petitioner-detenu -Sanjay Hirabhai Gondalia is hereby quashed and set aside. The petitioner -detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)